

December 5, 2013

VIA HAND DELIVERY
AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Ms. Cheri Wagner
Mr. Mike Sparks
Dr. LeVon E. Wilson
Mr. Steve Hein
Mr. Vernon Littles
Ms. Anshul Jain
Mr. Mike Herndon
Mr. Maurice Hill
C/O Bulloch County Schools
150 Williams Road, Suite A
Statesboro, GA 30458

Re: Religious Liberty Violations of the Teachers and Staff of Bulloch County Schools

Dear Members of the Bulloch County Board of Education:

Liberty Institute is a national religious liberty law firm that represents a teacher employed by Bulloch County Schools (hereafter, collectively, "Client") who have raised allegations of intimidation, discrimination, and even censoring of their religious liberty by administrators of Bulloch County Schools. We write to request that the Bulloch County Board of Education (hereafter, "Board") affirm the First Amendment freedoms of our client – and every teacher in Bulloch County Schools – and put an immediate end to the Board's unnecessary efforts to censor the protected religious speech and expression of our client.

Liberty Institute has significant experience regarding First Amendment issues in public schools. In fact, Kelly Shackelford, President and CEO of Liberty Institute, recently gave the fourth and final lecture of 2013 for the United States Supreme Court Historical Society in the Supreme Court Chambers on the topic of First Amendment rights in the public schools.¹

It is a foundational principle of American jurisprudence that teacher speech is protected by the First Amendment. *See Tinker v. Des Moines*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or **teachers** shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.") (emphasis added). Not only has the Supreme Court of the United States

¹ See <http://legaltimes.typepad.com/blt/2013/11/first-amendment-trailblazers-celebrated-at-supreme-court-.html>

recognized this principle, the Eleventh Circuit – which oversees Bulloch County Georgia – recently affirmed the rights of teachers under the First Amendment. *See Holloman v. Harland*, 370 F.3d 1252, 1272 (11th Cir. 2004) (“First Amendment freedoms in public schools, including a teacher’s right to academic freedom, could be constitutionally abridged under *Tinker* and *Burnside* only if there was a realistic threat that the conduct at issue would ‘materially and substantially’ interfere with the requirements of appropriate discipline in the operation of the school.”) (internal citations omitted). Moreover, “[t]he protections of the First Amendment have been given special meaning when teachers have been involved. Simply because teachers are on the public payroll does not make them second-class citizens in regard to their constitutional rights.” *Pred v. Board of Public Instruction*, 415 F.2d 851, 855-56 (5th Cir. 1969).

These protections exist for teachers because “[o]ur Nation is deeply committed to safeguarding academic freedom...” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). Importantly, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). These are not mere platitudes. These are the directives of the Supreme Court that the school district is obligated to follow.

The Board’s censorship is unlawful viewpoint discrimination. *See Good News Club v. Milford Centr. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Central Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993). Even in a non-public forum, the law is clearly established that the state cannot engage in viewpoint discrimination. *See Perry Educ. Ass’n. v. Perry Local Educators’ Ass’n.*, 460 U.S. 37, 45, 74 L. Ed. 2d 794, 103 S. Ct. 948 (1983); *see also Chandler v. Georgia Public Telecommunications Com’n*, 917 F.2d 486, 491 (11th Cir. 1990). No matter the forum and no matter the circumstances, there is nothing in the law that would permit a school board to engage in viewpoint discrimination and everything in the law to suggest the strongest of constitutional protections to our client – and all of the teachers of Bulloch County Schools – to fully engage their First Amendment freedoms as teachers. *See Searcey v. Harris*, 888 F.2d 1314, 1319 n.7 (11th Cir. 1989). “The prohibition against viewpoint discrimination is firmly embedded in [First Amendment] analysis.” *Id.* at 1325 (citation omitted).

Here, the Board, acting through its administrators, required teachers and staff with email signatures that, “have a Bible verse on [a teacher’s] school e-mail,”² to “remove [such religious

² Quoting an email sent November 12, 2013, by Julie Mizell, Principal of Sallie Zetterower Elementary School to Bulloch County teachers and staff. We understand similar emails have been distributed to other teachers and staff of Bulloch County Schools. The full email reads: “AUSCS (Americans United for Separation of Church and State) have filed a complaint with our BOE regarding employees praying with students and employees having Bible verses on school or e-mail [sic] and/or Bible verses posted in the classroom. As of today, if you have a Bible verse on your school e-mail [sic] and/or Bible verse posted in the classroom, please remove it immediately. If a student-led prayer is initiated, you must remove yourself and step away from the group. You cannot be in the middle of a student-led prayer, hold hands or place your hand on the back of a student during a student-led prayer. You can bow your head. Also, please do

references] immediately,”³ while permitting other non-religious references to remain in school email signatures.⁴

Moreover, it has ignored the myriad religious viewpoints of the teachers and staff of Bulloch County Schools and chosen to single out one, single religion and one, single religious text for censorship. Such intolerant bias and censorship that has been exhibited by the Board by its administrators is blatant viewpoint discrimination of the kind that both the Supreme Court of the United States and Eleventh Circuit have repeatedly rejected.

As the Eleventh Circuit makes clear: “One of the most egregious types of First Amendment violations is viewpoint-based discrimination. Government actors may not discriminate against speakers based on viewpoint, even in places or under circumstances where people do not have a constitutional right to speak in the first place . . . Without more explicit direction, [the Eleventh Circuit] will continue to require school officials to make decisions relating to speech which are viewpoint neutral.” *Halloman*, at 1279-1280 (internal citations omitted).

Finally, we also understand that administrators acting on behalf of the Board removed a Christmas card display erected by its teachers. Any invocation by the school board that somehow viewpoint discrimination is excused because the Christmas cards are allegedly school-sponsored speech – though that is clearly not the case – is unavailing as the Eleventh Circuit already dismissed such as an excuse as invalid. *See Searcey*, 888 F.2d at 1325 (“[a]lthough *Hazelwood* provides reasons for allowing a school official to discriminate based on content, we do not believe it offers any justification for allowing educators to discriminate based on viewpoint.”); *Bannon v. Sch. Dist.*, 387 F.3d 1208, 1215 (11th Cir. 2004) (“*Hazelwood* does not

not say a prayer out loud with students present. As I told you today, this information is to protect you and me. If you have any questions, please let me know.”

³ *Id.* Further indication of the systemic nature of the Board’s overt hostility toward religious speech and expression is found in a recent document posted on the Bulloch County Schools’ website: <http://bcss-ga.schoolloop.com/file/1344348322750/5263058342217861393.pdf>. The final bullet point expressly censors “religious messages or scriptures” housed in the signature lines of teacher/staff emails, asserting the Board’s ownership of said email addresses as sufficient reason to dictate to the teachers – though, perhaps not administrators – what may or may not be included therein.

⁴ Our client has provided us with examples of the email signatures used by various administrators at Bulloch County Schools. One example comes from a recent email sent by Kevin A. Judy, Ed.D., who, according to his email signature, is the Assistant Superintendent for Human Resources, Student Services, Professional Development and Certification. Following his lengthy title and contact information, Dr. Judy automatically ends each email with the following, “‘Being significant means helping others to be successful’ ~ Lou Holtz.” Permitting references to retired football coaches while intentionally censoring references to the Christian scriptures is unconstitutional viewpoint discrimination.

allow a school to censor school-sponsored speech based on viewpoint”). Moreover, attempts to excuse such censorship by reference to accommodating the privacy interests of a single teacher is unavailing because such action still does not excuse the viewpoint discrimination against the other teachers.

We are aware, and are conducting further investigation, of other serious allegations concerning the suppression of the religious liberty of our client, as well as several other teachers and staff employed by the Board by administrators of the Board. Indeed, it is clear that the Board is creating a situation in which teachers are fearful to express their faith while at work or even voice disagreement with the repeated decisions of this Board to favor secular speech over and against religious speech.

The actions by the Board forced teachers into a, “Hobson’s choice: speak or work . . . And in the teaching community we must recall that the threat of sanction may deter almost as potently as the actual application of sanctions. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed . . . What is at stake is the vindication of constitutional rights – the right not to be punished by the State or to suffer retaliation at its hand because a public employee persists in the exercise of First Amendment rights.” *Pred*, 415 F.2d at 856.

Claims the school board is attempting to comply with the Establishment Clause are misguided. Schools “do not endorse everything they fail to censor.” *Board of Education v. Mergens*, 496 U.S. 226, 250 (1990). While it may be tempting to censor speech in the name of the Establishment Clause, “there are countervailing constitutional concerns related to rights of other individuals in the community.” *Good News Club*, 533 U.S. at 119. The better approach was outlined by both the Seventh Circuit and the Ninth Circuit:

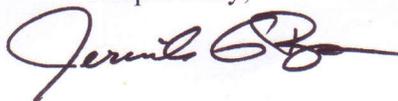
The desirable approach is not for schools to throw up their hands because of the possible misconceptions about endorsement of religion, but that instead it is [f]ar better to teach [students] about the first amendment, about the difference between private and public action, about why we tolerate divergent views...The school’s proper response is to educate the audience rather than squelch the speaker. Schools may explain that they do not endorse speech by permitting it. If pupils do not comprehend so simple a lesson, then one wonders whether the [] schools can teach anything at all. Free speech, free exercise, and the ban on establishment are quite compatible when the government remains neutral and educates the public about the reasons.

Hills v. Scottsdale Unified Sch. Dist., 329 F.3d 1044, 1055 (9th Cir. 2003) (quoting *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299-1300 (7th Cir. 1993).

We ask that you put a stop to censoring the email signatures of the teachers and staff of Bulloch County Schools and, within thirty (30) days, issue a statement to each of your teachers and support staff reaffirming their religious liberty. Because the Christmas season is upon us and

the attending violations are ongoing, we expect a reply to this letter within ten (10) days. You may contact me at 972-941-4444 or by email to jdys@libertyinstitute.org.

Respectfully,

A handwritten signature in dark ink, appearing to read "Jeremiah G. Dys". The signature is fluid and cursive, with a large initial "J" and a stylized "D".

Jeremiah G. Dys, Esq.,
Attorney, Liberty Institute